



Rome, 24 February, 2012

ESMA
European Securities and
Market Authority
103 Rue de Grenelle
75007 Paris

Prot. N. 149/12

Response to the Consultation Paper concerning ESMA Guidelines on certain aspects of the MiFID compliance function requirements

Assogestioni, the Italian association of asset management companies, welcomes the opportunity to comment on the Consultation Paper regarding “*Guidelines on certain aspects of the MiFID compliance function requirements*”.

In general, we support ESMA’s guidelines which aim to enhance clarity and foster convergence in the implementation of the MIFID organizational requirements related to the compliance function.

Although we agree with many of the ESMA’s guidelines, we wish to underline some points from where, in our opinion, some criticality could arise.

Please provide your comments (with reasons) on any or all aspects of this guideline on Article 6(3) exemptions.

We appreciate ESMA’s approach for a proportionate compliance with the requirements set out in Article 6(3) of the MiFID Implementing Directive. Due to the wide range of firms operating in the asset management industry, a proportionate compliance consents better adapting legal requirements to the characteristics of each firm.

As part of this, in our opinion small firms should decide whether to combine the compliance function with legal unit. It may be disproportionate for a small investment firm to set up a separate compliance function, it may also undermine firm competitiveness, due to the costs that could arise from the establishment of an independent compliance function.



Please provide your comments (with reasons) on any or all aspects of this guideline on the monitoring obligations of the compliance function.

We appreciate the ESMA position on the risk-based approach to compliance and on the need for a monitoring program. In line with the importance of the compliance function we deem opportune that the monitoring program has a multi-year basis.

We have only one comment regarding the role of the compliance function. We believe that the compliance function should not be used to verify - through on-site inspections at the operative business units - how policies and procedures are implemented in practice. According to the Italian regulation (Bank of Italy - CONSOB 08/03/2011), the compliance function regularly performs only desk-based activities and may have accesses to operative business units. By contrast, internal audit systematically performs its tasks through on-site inspections. This is confirmed by the fact that, according to our regulation, compliance normally use the audit resources to carry out on-site inspections. We deem necessary to specify that the compliance function access is an exception.

Please provide your comments (with reasons) on any or all aspects of this guideline on the effectiveness of the compliance function.

We agree with ESMA's position on the need for the allocation of adequate resources to the compliance function, because the effectiveness of the compliance function depends, to a large extent, on the number of staff allocated to the function. Furthermore, we agree with ESMA that the quantity of resources should vary in relation to the nature of the investment services and to the size of the firm. In this regard, in our opinion, the number of staff allocated to the compliance function should be balanced with the number of staff allocated to the internal audit function. As highlighted in the ESMA guidelines, these two functions perform in part the same tasks, one in a second level control and one in a third level control.

Please provide your comments (with reasons) on any or all aspects of this guideline on the advisory obligations of the compliance function

We agree with ESMA that investment firms should ensure that their staff are adequately trained and promote a compliance culture throughout the firm. However, we do not totally agree with the role of the compliance function as it is expressed in the Guidelines. We deem opportune to distinguish the control functions from the operative functions. According to the nature of the control function, the compliance function tasks should be limited to a control on other units activities. Therefore, for example, in our opinion, compliance function should not necessarily organize training for the staff by itself, and should not provide assistance to staff in their day-to-day business. The compliance function, according to its nature of control



function, should regularly monitor whether other units are correctly organizing training and, if so, should support other units in doing the same. Along the same line, the legal unit should provide assistance to staff from the operative units in their day-to-day business while the compliance function should monitor whether the legal unit is correctly performing its tasks, and, if asked, should be available to answer questions arising from legal unit activities.

General Director